

AMENDED IN SENATE AUGUST 7, 2000

AMENDED IN SENATE JUNE 13, 2000

AMENDED IN ASSEMBLY MAY 2, 2000

AMENDED IN ASSEMBLY APRIL 11, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2179**

**Introduced by Assembly Member Wesson**

February 23, 2000

---

---

An act to add Section 330d to the Penal Code, relating to gambling.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2179, as amended, Wesson. Gambling: prohibited online gambling games.

(1) Existing law prohibits, with the exception of specified games conducted on Indian lands, banking or percentage games played with cards, dice, or devices, including roulette, faro, and twenty-one, lottery games, other than charitable bingo, raffles, and the games of the California State Lottery, the operation, possession, sale or control of slot machines, as defined, and sports wagering and other forms of bookmaking and pool selling, other than licensed parimutuel wagering on horse races, and provides that any person who operates or bets at these prohibited gambling games is guilty of a crime and is punishable by a misdemeanor or felony, as specified. ~~Existing court decisions generally provide that contracts concerning~~

~~illegal gambling transactions, and any losses or debts thereby incurred, are against public policy and are unenforceable in this state.~~

This bill would state ~~finding~~ *findings* and declarations of the Legislature with regard to online gambling games, and would provide that it is unlawful for any person to operate or bet against any prohibited online gambling game, as defined, for money, checks, credit, or any other representative of value. This bill would provide that every person who operates or offers for play any prohibited online gambling game to any person physically located in this state at the time of the transaction, or who operates such a game from a host server, as defined, that is physically located in this state at the time of the transaction, is guilty of a misdemeanor and is punishable by imprisonment in a county jail not to exceed 90 days, a fine not to exceed \$1,000 per transaction, as defined, or by both that fine and imprisonment. By creating a new crime, this bill would impose a state-mandated local program.

This bill would provide that every person or entity who ~~aid~~ *aids* and abets another person who is physically located in this state to play or bet at any prohibited online gambling game in violation of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed 90 days, a fine not to exceed \$1,000 per violation, or by both that fine and imprisonment. This bill would provide that these provisions shall not apply with respect to advertisements that are not specifically directed towards this state and which contain adequate disclosure of the illegality of these games, *nor* to Internet service providers, web pages and search engines, or other indexes, networks, or network equipment which act as mere functional intermediaries between a patron and an online gambling enterprise and which do not reasonably constitute an advertisement or promotion of that enterprise. By creating a new crime, this bill would impose a state-mandated local program.

This bill would provide that every person who plays or bets at or against a prohibited online gambling game while physically located within this state is guilty of an infraction punishable by a fine not to exceed \$100 per transaction. By



creating a new crime, this bill would impose a state-mandated local program.

This bill would also provide that notwithstanding any other provision of law, the Attorney General is expressly authorized to enforce these provisions, and in addition to bringing criminal actions shall have the authority to file civil actions, issue cease and desist letters, and take other actions as necessary to maximize compliance with these provisions by online gambling enterprises, intermediaries, and individual citizens of this state, and would specifically authorize the Attorney General to review electronic, print, and other advertisements of online gambling enterprises for accuracy, and demand that advertisements appearing in this state disclose that these online games are illegal in this state. This bill would provide that the authority thereby provided to the Attorney General shall not be construed to limit the authority of a district attorney to enforce these provisions.

This bill would provide that its provisions are severable, and that if any of its ~~provision~~ *provisions* or its ~~application is~~ *applications are* held invalid, that invalidity shall not affect other provisions or applications that can be given effect.

~~This bill would declare findings and declarations of the Legislature with respect to the enforceability of gambling losses and debts from gambling in this state, and would state the intent of the Legislature that financial institutions and other intermediaries doing business in this state shall take notice that gambling debts in general, and debts from illegal online gambling in particular, may be unenforceable, and to accordingly encourage these entities to take appropriate action to protect their legitimate business interests.~~

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares  
2 the following:

3 (1) Online gambling threatens the health, safety, and  
4 welfare of the citizens of this state, because, unlike  
5 controlled gambling conducted within licensed gambling  
6 establishments and tribal casinos, online gambling is  
7 completely unregulated.

8 (2) The unregulated nature of online gambling  
9 enterprises, combined with the fact that many online  
10 gambling providers are located beyond the criminal  
11 jurisdiction of this state or of the United States, poses an  
12 unacceptable risk of fraudulent business practices to  
13 patrons of these establishments.

14 (3) Due to the anonymous nature of the Internet,  
15 online gambling establishments are unable to accurately  
16 assess the age or identity of online patrons, and thus these  
17 enterprises facilitate illegal gambling by minors and  
18 other persons prohibited from engaging in gambling.

19 (4) Online gambling enterprises routinely and  
20 incorrectly assert that persons in this state can legally  
21 participate in online gambling games, and thus these  
22 enterprises engage in false and misleading advertising.

23 (b) It is the intent of the Legislature in enacting this  
24 act to remove any ambiguity as to the illegality of online  
25 gambling in this state.

26 SEC. 2. Section 330d is added to the Penal Code, to  
27 read:

28 330d. (a) Notwithstanding any other provision of  
29 law, and in addition to the prohibitions and limitations on  
30 gambling contained in this chapter and in Chapter 9  
31 (commencing with Section 319), it is unlawful for any  
32 person to operate or bet at or against any prohibited  
33 online gambling game, as defined in subdivision (f), for  
34 money, checks, credit, or any other representative of  
35 value.

36 (b) Every person who deals, carries on, opens or  
37 causes to be opened, or who conducts, operates, or offers  
38 for play any prohibited online gambling game played for



1 money, checks, credit, or any other representative of  
2 value, to any person that he or she knows or has reason to  
3 know is physically located within this state at the time of  
4 the transaction, is guilty of a misdemeanor punishable by  
5 imprisonment in a county jail not to exceed 90 days, a fine  
6 not to exceed one thousand dollars (\$1,000) per  
7 transaction, or by both that imprisonment and fine.

8 (c) Every person who deals, carries on, opens or causes  
9 to be opened, or who conducts, operates, or offers for play  
10 any prohibited online gambling game played for money,  
11 checks, credit, or any other representative of value, from  
12 a host server, as defined in subdivision (g), that is  
13 physically located within this state at the time of the  
14 transaction, is guilty of a misdemeanor punishable by  
15 imprisonment in a county jail not to exceed 90 days, a fine  
16 not to exceed one thousand dollars (\$1,000) per  
17 transaction, or by both that imprisonment and fine.

18 (d) (1) Every person or entity who aids and abets  
19 another person who is physically located in this state to  
20 play or bet at any prohibited online gambling game in  
21 violation of this section is guilty of a misdemeanor  
22 punishable by imprisonment in a county jail not to exceed  
23 90 days, a fine not to exceed one thousand dollars (\$1,000)  
24 per violation, or by both that fine and imprisonment.

25 (2) This subdivision shall not apply with respect to  
26 advertisements that are not specifically directed towards  
27 the residents of this state and which contain adequate  
28 disclosure of the illegality of these games, nor shall this  
29 subdivision apply with respect to Internet service  
30 providers, web pages containing hypertext links, web  
31 search engines, networks, routers, hubs, or other  
32 directories, indexes, devices, or equipment which act as  
33 mere functional intermediaries between a patron and an  
34 online gambling enterprise and which do not reasonably  
35 constitute an advertisement or promotion of that  
36 enterprise.

37 (e) Every person who plays or bets at or against any  
38 prohibited online gambling game for money, checks,  
39 credit, or any other representative of value, while that  
40 person is physically located within this state, is guilty of an

1 infraction punishable by a fine not to exceed one hundred  
2 dollars (\$100) per transaction.

3 (f) A prohibited online gambling game, for purposes  
4 of this section, includes, but is not limited to, any of the  
5 following games and any common variations thereon or  
6 facsimiles thereof, as well as any banking or percentage  
7 game played with dice, cards, or devices, that is  
8 conducted, operated, or offered for play over the Internet  
9 for money, checks, credit, or any other representative of  
10 value:

11 (1) Craps.

12 (2) Roulette.

13 (3) Blackjack or twenty-one.

14 (4) Slot machines.

15 (5) Poker, including stud poker, draw poker,  
16 Caribbean stud poker, or Pai gow poker.

17 (6) Baccarat.

18 (7) Bingo, including bingo pulltab games.

19 (8) Sportsbook wagering, including wagering on the  
20 outcome, statistics, or any other aspect of a sporting  
21 event, other than lawful wagering on a horse race.

22 (9) Lottery games, other than games lawfully  
23 conducted by the California State Lottery.

24 (g) A host server, for purposes of this section, means  
25 the computer or network of computers on which an  
26 online gambling game is operated. Host server does not  
27 include any computer, hub, or other device, or any  
28 independent computer network, that acts as an  
29 intermediary in the transfer of Internet Protocol (IP)  
30 packets to and from the host server, provided that the  
31 intermediary device is not owned or controlled by the  
32 person or entity, or a subsidiary thereof, that owns or  
33 controls the host server.

34 (h) A transaction, for purposes of this section, means  
35 each transfer of funds or other valuable consideration for  
36 use in, or in connection with, the making of a wager, series  
37 of wagers, or parlay wager.

38 (i) Notwithstanding any other provision of law, the  
39 Attorney General is expressly authorized to enforce this  
40 section, and in addition to bringing criminal actions shall

1 have the authority to file civil actions, issue cease and  
2 desist letters, and take other actions as necessary to  
3 maximize compliance with these provisions by online  
4 gambling enterprises, intermediaries, and individual  
5 citizens of this state. The Attorney General is specifically  
6 authorized to review electronic, print, and other  
7 advertisements of online gambling enterprises for  
8 accuracy, and may demand that advertisements  
9 appearing in this state disclose that these online games  
10 are illegal in this state. Nothing in this subdivision shall be  
11 construed to limit the authority of a district attorney to  
12 enforce the provisions of this section.

13 (j) The provisions of this section are severable. If any  
14 provision of this section or its application is held invalid,  
15 that invalidity shall not affect other provisions or  
16 applications that can be given effect without the invalid  
17 provision or application.

18 ~~SEC. 3. The Legislature finds and declares that~~  
19 ~~pursuant to the long-standing public policy of this state,~~  
20 ~~as interpreted by its courts, losses and debts from~~  
21 ~~gambling generally are not enforceable in California. It~~  
22 ~~is the intent of the Legislature in enacting this section that~~  
23 ~~financial institutions and other intermediaries doing~~  
24 ~~business in the State of California take notice that~~  
25 ~~gambling debts in general, and debts from illegal online~~  
26 ~~gambling in particular, may be unenforceable, and~~  
27 ~~accordingly these entities are encouraged to take~~  
28 ~~appropriate action to protect their legitimate business~~  
29 ~~interests.~~

30 ~~SEC. 4.~~ No reimbursement is required by this act  
31 pursuant to Section 6 of Article XIII B of the California  
32 Constitution because the only costs that may be incurred  
33 by a local agency or school district will be incurred  
34 because this act creates a new crime or infraction,  
35 eliminates a crime or infraction, or changes the penalty  
36 for a crime or infraction, within the meaning of Section  
37 17556 of the Government Code, or changes the definition

1 of a crime within the meaning of Section 6 of Article  
2 XIII B of the California Constitution.

O

